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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87806; File No. SR-CBOE-2019-123]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 8.10 to Remove the Attestation Filing Requirements in Connection with Trading Permit Holders' Policy and Procedures Regarding the Misuse of Material, Nonpublic Information

December 19, 2019

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 17, 2019, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend Rule 8.10 to remove the attestation filing requirements in connection with Trading Permit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Holders' ("TPHs") policy and procedures regarding the misuse of material, nonpublic information. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to remove the Rule 8.10 requirement that TPHs that file only annual SEC Form X-17A-5 reports ("FOCUS Reports")⁵ must also file contemporaneous attestations regarding compliance with the maintenance and enforcement of policies and procedures to prevent the misuse of material, nonpublic information with such reports. In addition, the Exchange also proposes to remove Rule 8.10.03, which

⁵ FOCUS Reports are "Financial and Operational Combined Uniform Single Reports" and must be completed by all broker-dealers registered with the Securities and Exchange Commission (the "Commission"). The form reports a broker-dealer's financial and operating condition.

provides that a subset of TPHs that file annual FOCUS Reports may use Exchange-developed OE-418 forms to satisfy the Rule 8.10 filing and recordkeeping requirements.⁶

Current Rule 8.10 provides that every TPH shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such TPH's business, to prevent the misuse, in violation of the Securities Exchange Act of 1934 (the "Act") and Exchange Rules, of material, nonpublic information by such TPH or persons associated with such TPH. It also provides that TPHs required to file FOCUS Reports on an annual basis only, pursuant to Rule 7.3 (Financial Reports), must contemporaneously file, with their annual reports, attestations signed by such TPHs stating that the procedures mandated by Rule 8.10 have been established, enforced and maintained. Current Rule 8.10.03 provides that the Exchange-developed form (OE-418) may be submitted by a subset of TPHs that only file annual FOCUS Reports to satisfy attestation and record keeping requirements pursuant to Rule 8.10. Specifically, the Exchange implemented the attestation requirement for TPHs that file FOCUS Reports only annually because those TPHs that file FOCUS Reports on a more frequent basis (i.e. monthly and quarterly) were generally subject to periodic exams by the Exchange in which the Exchange reviewed, among other things, the procedures maintained by such TPHs pursuant to Rule 8.10.⁷ TPHs filing FOCUS Reports only annually were not subject to periodic exams by the Exchange at the time when Rule 8.10 was originally adopted.

⁶ See Cboe Options Regulatory Circular RG19-003, which sets forth the criteria for use of form OE-418: (1) individual TPHs with no employees; (2) individual TPHs who employ no more than three non-TPH employees; or (3) TPH organizations with no more than three employees who are nominees and which employ no more than six non-TPH employees. (January 11, 2019).

⁷ See Securities Exchange Act Release No. 29967 (November 19, 1991), 56 FR 61067 (November 29, 1991) (SR-CBOE-91-41).

Today, however, all TPHs are subject to the Exchange's risk-based exam process, which is conducted by Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange pursuant to a regulatory services agreement ("RSA"). Examinations are based on an annual risk assessment to determine the cycle, scope and content of examinations per firm to ensure each firm is appropriately examined.⁸ Moreover, the Exchange may conduct off-cycle examinations of a TPH, as necessary.

The Exchange notes that no more than 10 TPHs currently fall under the Rule 8.10 attestation requirement, and that the Exchange currently collects the OE-418 forms in accordance with Rule 8.10.03 for those TPHs that submit the form to satisfy the Rule's attestation and record-keeping requirements. As a result of the proposed rule change, all TPHs would continue to be subject to the Rule 8.10 recordkeeping requirement, which, pursuant to Rule 7.1, a TPH must make available to the Exchange upon request. The Exchange believes it is an additional administrative burden to the limited number of TPHs who are required to submit an attestation when all TPHs are now subject to periodic examination, including review of the TPHs procedures pursuant to Rule 8.10, if warranted.

The Exchange further notes that all TPHs are subject to Rule 8.16, which provides that, among other things, each TPH and associated person of a TPH is required to be under the supervision and control of appropriately qualified supervisor, as well as implement written supervisory procedures and a system for applying such procedures to supervise the types of business in which the TPH engages and to supervise the activities of all associated persons. Under paragraph (g) of Rule 8.16, each TPH must conduct an interview or meeting with all associated persons, during which compliance matters relevant to the activities of the

⁸ While examinations are on a risk-based exam cycle, each TPH is examined no less than every three years.

associated person are discussed. Each TPH must also conduct an annual compliance review and written report on the TPH's supervision and compliance effort during the preceding year and on the adequacy of the TPH's ongoing compliance processes and procedures. The Rule further requires that the TPH's Chief Executive Officer ("CEO") (or equivalent officer) certifies that the TPH has processes in place to: (a) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange Rules and federal securities laws and regulations; (b) modify such policies and procedures as business, regulatory and legislative changes and events dictate, and; (c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Exchange Rules and federal securities laws and regulations. Rule 8.16 was adopted by the Exchange following its adoption of Rule 8.10, and prior to the adoption of Rule 8.16 only TPHs approved to conduct business with the public were subject to such supervision requirements.⁹ The Exchange believes that the Rule 8.10 attestation requirement is generally redundant of the CEO certification requirement in Rule 8.16.

The Exchange believes that periodic TPH examinations and supervision requirements pursuant to Rule 8.16 are sufficient to ensure TPH compliance with the requirement to establish enforce and maintain policies and procedures to prevent the misuse of material, nonpublic information. As noted previously, the Exchange, through its regulatory services provider, now conducts periodic risk-based exams of all TPHs and all TPHs are currently subject to the supervision requirements of Rule 8.16. Therefore, the Exchange believes that the attestation requirement and accompanying OE-418 form

⁹ See Securities Exchange Act Release No. 71644 (February 18, 2014), 79 FR 13365 (March 10, 2014) (SR-CBOE-2013-126).

are redundant of the current exam process and other Exchange Rules in place, thus, their proposed removal would lift an unnecessary additional reporting step and administrative procedure.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁰

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that removing the duplicative and unnecessary attestation requirement in connection with Rule 8.10 and 8.10.03 would serve to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

to remove impediments to and perfect the mechanism of a free and open market and a national market system, and benefit investors. Specifically, the Exchange believes that the supervision, annual report and CEO certification requirements pursuant to Rule 8.16 and changes to its examination practices which subject all TPHs to periodic risk-based examination, both of which were implemented/adopted after the adoption of Rule 8.10, are sufficient to ensure that TPHs have internal processes and procedures in place for identifying and preventing misuse of material, non-public information. In addition, all TPHs are currently, and will remain, subject to the Rule 8.10 recordkeeping requirement, and they must make such records available to the Exchange upon request. Therefore, the proposed rule change is designed to lift the unnecessary administrative burden of the limited number of TPHs who are required to also attest that the procedure mandated by Rule 8.10 have been established, enforced and maintained. As a result of the above-stated practices and procedures already in place, the Exchange believes that removing the attestation requirement in Rule 8.10 would benefit investors by removing a duplicative and unnecessary reporting step and administrative procedure. Further, the Exchange does not believe that the proposed rule change would affect the protection of investors as the Exchange may at any time require TPHs to produce records in connection with maintenance and enforcement of policies and procedures to prevent the misuse of material, nonpublic information, as well as conduct an off-cycle examination of a TPH, as necessary.

In addition to this, the Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹³ which provides that the Exchange be

¹³ 15 U.S.C. 78f(b)(1).

organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. As noted above, the Exchange currently has the capacity under other Exchange Rules to be able to enforce compliance by TPHs related to submission of appropriate records in connection with the prevention of the misuse of non-public information. The Exchange believes that removing redundant and unnecessary rules would allow for the Exchange to be organized and better able to carry out the purposes of the Act and enforce compliance. Removing the Rule 8.10 attestation requirement would reduce the administrative burden on the Exchange in having to collect and maintain reports that are generally duplicative of reports required under other Exchange Rules, and would allow the Exchange to better allocate regulatory resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed rule change is not intended to address competitive issues but rather is concerned with facilitating less burdensome and more efficient regulatory administration. The Exchange notes that the Rule 8.10 requirement to maintain and enforce policies and procedures to prevent the misuse of material nonpublic information and recordkeeping requirement of such would continue to uniformly apply to all TPHs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2019-123 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-219-123. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2019-123 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

